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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 322

IOWA STATE TRAVELING MEN'S ASSOCIATION,
Petitioner,

vs.

MARTHA SCOTT PARMALEE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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MARTHA SCOTT PARMALEE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Petitioner Iowa State Traveling Men's Association prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit reversing the judgment for the Petitioner entered by the United States District Court for the Southern District of Florida, Miami Division.

OPINION BELOW.

The opinion of the Court of Appeals (R. 39-47) has not yet been reported.

JURISDICTION.

The judgment of the Court of Appeals was entered August 6, 1953 (R. 47). The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

QUESTION PRESENTED.

Where the only contact an Iowa insurance company has with the State of Florida consists of sending letters from Iowa through the United States mails addressed to a Florida resident, can a District Court sitting in Florida acquire jurisdiction over the Iowa company by constructive service of process in a private suit seeking an *in personam* money judgment against the Iowa company?

STATE STATUTE INVOLVED.

The appeal involves directly the constitutionality of two sections of Florida Statutes, 1951, the pertinent parts of which provide:

625.30 Service of process upon unauthorized insurer.—

(1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (a) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (b) the solicitation of applications for such contracts, (c) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (d) any other transaction of the business of insurance, is equivalent to and shall constitute an appointment by such insurer of the insurance commissioner of this state and his successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary

arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process shall be made by delivering to and leaving with the insurance commissioner or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The insurance commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff or plaintiffs' attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

625.31 Defense of action by unauthorized insurer.—

(1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either (a) deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any

final judgment which may be rendered in such action, provided, however, that the court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceedings, and that such insurer will pay any final judgment rendered without requiring suit to be brought on such judgment in the state where such securities are located, and that if, nevertheless, such suit shall be brought on such final judgment the insurer shall waive all defenses thereto; or (b) procure a certificate of authority to transact the business of insurance in this state.

(2) The court in any action, suit, or proceeding, in which service is made in the manner provided in subsections (2) or (3) of §625.30 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections (2) or (3) of §625.30 hereof on the ground either (a) that such unauthorized insurer has not done any of the acts enumerated in subsection (1) of §625.30, or (b) that the person on whom service was made pursuant to subsection (3) of §625.30 was not doing any of the acts therein enumerated.

STATEMENT.

On February 8, 1952 Mrs. Parmalee sued the Petitioner in the United States District Court for the Southern District of Florida, Miami Division, to recover a judgment for $10,000 for death benefits which she alleged Petitioner owed her as beneficiary of a policy of insurance issued by it (R. 3-7). The summons and the complaint were served upon the Insurance Commissioner of the State of Florida under Section 625.30 set out above, copies being sent to the Petitioner in Iowa by registered mail by Mrs. Parmalee's attorney (R. 8).

Petitioner filed a motion to dismiss the action or in lieu thereof to quash the return of service on the ground that it was not subject to service of process in Florida and that the attempted service on the Insurance Commissioner if sustained would deny to the Petitioner due process of law and equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 10-11). An affidavit setting forth the facts concerning Petitioner's activities was filed in support of the motion (R. 12-23). After a full hearing the District Court on March 27, 1952 entered final judgment dismissing the action and holding Petitioner was not subject to service of process in Florida (R. 24).

Mrs. Parmalee filed a Petition for Rehearing (R. 25-33) which was denied by the District Court (R. 33-34). On appeal the order of dismissal was reversed by the Court of Appeals for the Fifth Circuit with directions to the District Court to entertain the suit (R. 47).

The Facts.

The facts in this case are not disputed. Petitioner is an Iowa corporation organized to provide its members with low-cost accident insurance (R. 15-16). All of its business is transacted in Des Moines, Iowa (R. 13). Petitioner has no property and no office in Florida or any other state except Iowa (R. 13). All of its insurance contracts are made in Iowa (R. 7, 13, 21) and are governed by Iowa law (R. 21). Petitioner has no agents soliciting business for it in Florida (R. 13). All assessments are paid at Des Moines and all claims are processed and paid at the Des Moines office (R. 13, 20, 22).

The insurance contract sued on in this case was made in Des Moines, Iowa (R. 7, 14, 21). The name of the insured was obtained by Petitioner from a lawyers' directory without the aid of any agents in Florida or any of its other members. An application form for membership was mailed to the insured by Petitioner from Des Moines. He executed the application and mailed it to Petitioner in Des Moines with a remittance of $2 (R. 13). Upon approval of the application by Petitioner's Board of Directors in Des Moines, a certificate of membership was issued and mailed to the insured from Des Moines (R. 14). All subsequent assessments were mailed by the insured to Petitioner in Des Moines (R. 14) where the contract required them to be paid (R. 22). Petitioner's only contact with Florida upon which the service of process is based is sending letters through the United States mails from Des Moines, Iowa, to Florida.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In reversing the judgment dismissing the action entered by the United States District Court for the Southern District of Florida, Miami Division.
2. In holding that Sections 625.30 and 625.31, Florida Statutes, 1951, do not deny to the Petitioner due process of law and equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT.

The decision of the Court of Appeals holds constitutional a state statute which provides that an out-of-state insurance company is doing business in Florida for purposes of constructive service of process in a private suit seeking an *in personam* money judgment if it sends a letter from its Iowa office to its insured in Florida through the United States mails and which prohibits the out-of-state insurer from defending the action unless it first files a bond or cash or securities sufficient to secure the payment of any judgment which may be rendered against it in such action.

In so holding the court below has decided a question of great importance in a manner inconsistent with decisions of this Court and contrary to the interests of justice.

1. From *Pennoyer* v. *Neff*, 95 U. S. 714 (1878), to *International Shoe Company* v. *Washington*, 326 U. S. 310 (1945), it has been a settled legal principle that under the due process clause of the Fourteenth Amendment *in personam* jurisdiction in a private suit seeking a money judgment cannot be acquired over a foreign corporation by con-

structive service of process beyond the state's borders when the only contact of the foreign corporation with such state is mailing letters from its home office into the state through the United States mails.

The court below rests its decision largely upon *Travelers Health Association* v. *Virginia*, 339 U. S. 643 (1950). The Travelers case involved the application of the licensing provisions of the Virginia Blue Sky Law to a Nebraska corporation. The sole question presented was that of Virginia's police power to enforce its regulatory statute through a cease and desist order. This Court in a five-to-four decision held that the activities of the insurance company in Virginia furnished a sufficient jurisdictional basis to institute these regulatory proceedings.

Mr. Justice Douglas in his concurring opinion was careful to specifically reserve the point presented by this Petition:

> "* * * I put to one side the case where a policyholder seeks to sue the out-of-state company in Virginia. His ability to sue is not necessarily the measure of Virginia's power to regulate, as the Court said in *Old Wayne Mut. Life Asso.* v. *McDonough*, 204 U. S. 8, 21, 51 L. Ed. 345, 350, 27 S. Ct. 236. It is the nature of the state's action that determines the kind or degree of activity in the state necessary for satisfying the requirements of due process."[1]

Nevertheless the Court of Appeals interprets the Travelers case as authority for the proposition that *in personam* jurisdiction can be acquired over a foreign corporation in a policyholder's suit by constructive service when none of its activities take place within the state.

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[1]339 U. S. 652, 653.

The same reasons that prompted this Court to review the decision of the court below in the Travelers case equally call for a review of the decision in the present case.

2. The decision below is in conflict with *Minnesota Commercial Men's Association* v. *Benn*, 261 U. S. 140 (1923), the case cited by Mr. Justice Stone in *International Shoe Company* v. *State of Washington*, 326 U. S. 310, 319 (1945), as an example of an undomesticated corporation which had not sufficient contacts with the state of the forum to permit constructive service of process. In that case a Minnesota mutual assessment insurance company organized along the same lines as Petitioner had insured the life of plaintiff's decedent, a Montana resident. A claim was made and rejected whereupon suit was brought in Montana. Service was made on the Montana Secretary of State and Insurance Commission pursuant to that state's statutes. A default judgment was entered for the plaintiff. Plaintiff then brought her action in Minnesota on the judgment. The Association's principal contention was that it had never done business in Montana and therefore the Montana court had no jurisdiction and the judgment was void as violative of due process. Plaintiff contended that the Association was doing business in Montana because the application was filled out and signed, notices received, and dues and assessments sent, all in Montana.

On the basis of these facts this Court held that the Association was clearly not doing business in Montana:

> "It also seems sufficiently clear from *Allgeyer* v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832, 17 Sup. Ct. Rep. 427; *Hunter* v. *Mutual Reserve L. Ins. Co.*, and *Provident Sav. Life Assur. Soc.* v. *Kentucky*, *supra*, that an insurance corporation is not doing business within a state merely because it insures lives of persons living

therein, mails notices addressed to beneficiaries at their homes, and pays losses by checks from its home office. See also *Pembleton* v. *Illinois Commercial Men's Asso.*, 289 Ill. 99, 124 N. E. 355.

"We conclude that the record fails to disclose any evidence sufficient to show that petitioner was doing business in Montana within the proper meaning of those words, and that the court there lacked jurisdiction to award the challenged judgment.

"Reversed."

The decision of the court below is also in conflict with the principles laid down in *Allgeyer* v. *Louisiana*, 165 U. S. 578 (1897); *Old Wayne Mutual Life Ass'n* v. *McDonough*, 204 U. S. 8 (1907); and *Provident Savings Life* v. *Kentucky*, 239 U. S. 103 (1915).

3. In approving the constitutionality of the provisions of the Florida Law the Court of Appeals has not only misinterpreted the controlling decisions of this Court with respect to the requirements of due process in the service of process on undomesticated foreign corporations, but it has also ignored the controlling decisions of this Court defining the limitations within which a state may lawfully control the making of contracts beyond its borders:

Allgeyer v. *Louisiana*, 165 U. S. 578 (1897).

New York Life Insurance Co. v. *Head*, 234 U. S. 149 (1914).

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U. S. 346 (1922).

Aetna Life Insurance Co. v. *Dunken*, 266 U. S. 389 (1924).

Fidelity & D. Co. v. *Tafoya*, 270 U. S. 426 (1926).

Compania General de Tabacos v. *Collector of Internal Revenue*, 275 U. S. 87 (1927).

Home Insurance Co. v. *Dick*, 281 U. S. 397 (1930).

Hartford Accident & Indemnity Company v. *Delta & Pine Land Company*, 292 U. S. 143 (1934).

Connecticut General Life Insurance Company v. *Johnson*, 303 U. S. 77 (1938).

4. The decision of the court below is also in conflict with the principles laid down in the following decisions of the Court of Appeals for the Eighth Circuit, two of which involved the Petitioner:

Rausch v. *Commercial Travelers Mutual Accident Association*, 38 F. 2d 766 (8th Cir. 1930) cert. den. 281 U. S. 763.

Oliver v. *Iowa State Traveling Men's Ass'n*, 76 F. 2d 963 (8th Cir. 1935).

Sasnett v. *Iowa State Traveling Men's Ass'n*, 90 F. 2d 514 (8th Cir. 1937).

5. The Florida statute under which service in this case was made attempts to impose conditions on the lawful use of the United States mails in other states and thus deprives the Federal government of its absolute control and regulation of the mails which is expressly and exclusively delegated to Congress by Clause 7, Section 8, Article I of the Constitution of the United States. This is believed to be beyond the powers of any State in view of the decisions of this Court.

> "The states before the Union was formed could establish postoffices and post-roads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. *When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power*, and the grant carried with it the right to exercise all the powers which made that power effective." (Italics supplied)
>
> *Ex Parte Rapier*, 143 U. S. 110, 134 (1892).

See also: *Pensacola Telegraph Co.* v. *Western Union Telegraph Company*, 96 U. S. 1, 9 (1878); *In the Matter of Jackson*, 96 U. S. 727 (1878); *Badders* v. *United States*, 240 U. S. 391, 393 (1916).

The states, themselves, have recognized the exclusive power of Congress to regulate and control the use of the mails:

> "The establishment of post offices and regulation of the mails is a matter which has been dealt with by the federal authorities under their constitutional powers. * * * Subject to federal laws and regulations, they are open to all who desire to conduct through them legitimate business transactions."
>
> * * *
>
> "A state can exercise its police power to the limits of its own domain, but it cannot go beyond and police the citizens of other states, acting beyond its borders in the conduct of a lawful business, or prevent their using the mails by posting letters or circulars in such other states in carrying on legitimate business."
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> *Rose Co.* v. *State*, 133 Ga. 353, 65 S. E. 770, 773-4 (1909).

After extensive hearings in 1935 and again in 1943 Congress refused to adopt the Hobbs Bill[2] which would have denied mail order insurers the use of the mail unless they qualified under State laws. The decision of the Court below allows Florida to do indirectly what the Congress of the United States refused to do directly.

6. The decision below misinterprets the effect of the McCarran Act, 59 Stat. 33-34, 15 U. S. C. §1011-12. The

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[2]See Hearings, Committee on the Post Office and Post Roads, House of Representatives, 77th Congress on H. R. 6452.

Act does not add to the powers of the State of Florida the right to acquire jurisdiction and to render judgments *in personam* over foreign insurance companies not personally present in the State of Florida in violation of the due process provisions of the United States Constitution or the right to deny full and free use of the United States mails to foreign corporations which do not do business in Florida. The Act was passed mainly to sustain state taxation of insurance companies from any attack under the commerce clause, not "to validate unconstitutional provisions of state laws * * *" *Prudential Insurance Company* v. *Benjamin*, 328 U. S. 408, 430 (1946).

7. The Florida statute under which service of process was effected in this case is the Unauthorized Insurers Process Law drafted and recommended for adoption in 1948 by the National Association of Insurance Commissioners.[3] At least 24 other states have recently adopted the same statute.[4] The decision of the court below is the first decision squarely involving the constitutionality of this new law by any Court of Appeals or by any state court of last resort.

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[3]This statute is not to be confused with the Uniform Unauthorized Insurers Act approved by the National Conference of Commissioners on Uniform State Laws. 9A U. L. A., p. 347. The service of process sections of the Uniform Act are substantially different from the provisions of the Insurance Commissioners Act and do not present the constitutional problems raised by this Petition.

[4]Alabama, California, Connecticut, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Pennsylvania, Texas, Virginia and West Virginia. See "1951 Proceedings of the National Association of Insurance Commissioners," p. 515.

In view of the widespread adoption of this Act the constitutional point involved is of substantial importance. The manner of service of process on foreign corporations provided in the Act goes far beyond anything ever approved by this Court as within the requirements of the Fourteenth Amendment. If this Act is constitutional the insurance companies which specialize in offering this low-cost insurance coverage will have to make substantial changes in their rates and methods of doing business at once. The constitutional point should be decided.

The likelihood of the adoption of statutes using this Florida statute as a model also presents potentialities which are serious to contemplate. If legislation should be enacted in the form of the Florida statute authorizing the institution of actions in Florida against non-resident foreign corporations which transmit merchandise by mail or express addressed to residents of the State of Florida, the repercussions are readily apparent.

8. Even assuming the service in this case meets due process and equal protection requirements the statute deprives Petitioner of reasonable opportunity to defend the action. Section 625.31(1) requires the Petitioner to either deposit with the court cash or securities or file a surety bond sufficient to secure payment of any final judgment which may be rendered against it *before* it can file any defense to the action. Such a limitation on Petitioner's right to defend denies it due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment. *White* v. *Ward*, 157 Ala. 345, 47 So. 166, 169 (1908).

9. If the decision of the court below is permitted to stand it may well spell the end of mail-order insurers and the substantial service which they render to the public. Solely through use of the mails small companies like Peti-

tioner have been able to offer a policy providing liberal coverage at a price well within the reach of low income groups. The insured here paid $2 for his $5,000 policy (R. 7, 13-14). This initial payment of $2 covered the entire cost of his insurance for almost 6 months (R. 33).

Petitioner was able to provide the insured with this broad coverage for such a nominal charge because it carefully selected its risks (R. 16) and then distributed these risks over a wide geographical area through the use of the United States mails. On the basis of such nominal charges Petitioner would not be financially capable of maintaining or establishing a nationwide agency organization or of defending suits in every state in the Union.

It is true that it would be inconvenient for Respondent not to be able to prosecute her action in Florida. However this is one of the incidents of low cost insurance like that purchased by Respondent's deceased husband and Petitioner's rates have been set on this basis. The insured had the opportunity to purchase a policy from an insurance company maintaining a traditional agency organization if he had been willing to pay the substantially higher premium that such companies are forced to charge to pay for the additional services which they render. However for reasons of his own he chose instead to purchase the relatively inexpensive coverage offered by Petitioner. Under such circumstances it is inequitable to require Petitioner to now assume additional burdens not contemplated by its contract or its rates.

The existence of these insurance operations is by no means novel. Mail order insurers have existed for decades and are carefully regulated by several departments of the federal government to prevent any prospective policy

holder from being misled by false advertising.[5] The burden imposed upon the entire membership of such an association depending as it does, entirely upon moderate assessments, 75% of which are actually paid out in benefits (R. 19), as a result of being compelled to defend in every state of the Union certainly outweighs the inconvenience of the individual beneficiary. The pinch of the decision below holding Petitioner subject to suit wherever its policy holder resides may well be the stranglehold.

CONCLUSION.

For the foregoing reasons we respectfully submit that this petition for a writ of certiorari should be granted.

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ROBERT H. ANDERSON,

_____,

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September, 1953.

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[5] *e. g.* see Trade Practice Rules of the Federal Trade Commission Relating to the Advertising and Sales Promotion of Mail Order Insurance 16 C. F. R. §3.10-3.285, §3.395 (1949 ed.), 3 CCH Trade Regulation Reporter, ¶20.268; also 39 U. S. C., §732 and 18 U. S. C., §1341-42.